

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4389 of 2018

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1. Jamadar Chaudhary Son of Shiv Prasad Chaudhary
 2. Dharmendra Kumar Yadav Son of Ramashrya Yadav
 3. Bijli Prasad Yadav @ Bijay Chaudhary Son of Bhichchan Prasad Yadav
- All are Resident of Village-Bhagwanpur Tola, P.O>-Balesra, P.S.-
Uchakagaon, District-Gopalganj.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Land Reform, Patna.
2. The District Magistrate, Gopalganj
3. The Sub-Divisional Officer Hathua Gopalganj
4. The Circle Officer, Uchakagaon, Gopalganj
5. Paras Nath Yadav Son of Late Dukhi Yadav
6. Nandji Chaudhary Son of Late Akbal Chaudhary
7. Dinesh Chaudhary
8. Rajendra Chaudhary
9. Lalan Chaudgry 7 to 9 are Sons of Shiv Balak Chaudhary
10. Ramdhari Chaudhary Son of Late Ramlal Chaudhary
11. Saral Yadav Son of late Gorakh Yadav
12. Chandrama Chaudhary Son of Late Mangal Chaudhary
13. Raja Chaudhary Son of Late Mangal Chaudhary
14. Awadh Chaudhary Son of Late Bhagwat Chaudhary
15. Bhagwan Chaudhary
16. Hari Shankar Chaudhary 15 to 16 are Son of Late Shivbhan Chaudhary
17. Moti Lal Charudhary Son of Late Shiv Bachan Chaudhary
18. Bharat Chaudhary
19. Ram Chandra Chaudhary
20. Birendra Chaudhary
21. Bir Bahadur Chaudhary 18 to 21 are Sons of Late Shiv Dhari Chaudhary
22. Mahabir Yadav Son of Late Dahari Chaudhary All are Resident of
Village-Bhagwanpur Tola, P.O.-Balesra, P.S.-Uchakagaon, District-
Gopalganj.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Anirudh Kumar Verma, Advocate

For the Respondent/s : Mr. R.K. Roy- GP18

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

03/ 03-04-2018

Heard Mr. Anirudh Kumar Verma, learned

counsel for the petitioner and Mr. Raj Kishore Roy, learned GP-18



for the State respondents.

In view of the nature of order this Court intends to pass, this Court is not inclined to adjourn the matter any further or to issue notice to private respondent nos. 5 to 22.

The present Writ application has been filed for a direction to the respondent authority to get the encroachment removed from the public land appertaining Khata No. 508, Plot No. 2205 which is recorded in cadastral survey khatian, as contained in Annexure-1, as 'Gairmazarua Aam' shown as public road (raasta).

It is submitted by learned counsel for the petitioners that the land in question is recorded as 'Gairmazarua Aam' and the same has been used as public road by the public at large including the petitioners but the same has been encroached upon by the private respondent nos. 5 to 22.

On 15.10.2016 a public petition was filed before the Circle Officer, Uchakagaon, respondent no. 4 for getting the encroachment removed from the public road in question, as contained in Annexure-2, consequently on the direction of the Circle Officer, the Circle Amin submitted a report on 04.11.2016 to the Circle Officer, as contained in Annexure-3, to the extent that 11 persons have encroached public road, who are respondents in



the present writ application. Apart from that others have also encroached public road but it does not figures in the report of Anchal Amin. Subsequently, the Circle Officer, Uchakagaon, respondent no. 4 issued notice to some of the encroachers. One such notice dated 12.11.2016 has been brought on record as Annexure-4. wherein Raja Chaudhary, respondent no. 13 was directed to appear in the office of Circle Officer on 14.12.2016 at 11.00 A.M. as to why the encroachment could not be removed from the land of Khata No. 508, Plot No. 2205, but till date the encroachment has not been removed and it does not appear that any proceeding has been initiated under Bihar Public Land Encroachment Act, 1956. Hence, this writ application.

It is submitted by learned counsel for respondent nos. 1 to 4 that, at present, he is not having any instruction whether any encroachment proceeding has been initiated or not, and if initiated, whether it has been concluded or not, but if a public road has been encroached upon then appropriate direction will be issued to the Circle Officer, Uchkagaon, respondent no. 4 to initiate a proceeding and conclude the same within a time frame.

Having heard the learned counsel for the parties, this Court is of the view that for initiation of proceeding, the only



pre-condition under Section 3 of the Bihar Public Land Encroachment Act, 1956 is that if it appears to the Collector under the Act that from an application made or from the information received that any person has encroached upon a public land or is responsible for continuance of any encroachment upon any public land. In the present case, Circle Officer, Uchkagaon, respondent no. 4 came to know about the encroachment on the land in question on 15.10.2016 when a public petition was submitted and thereafter on 04.11.2016 when Anchal Amin reported that the land in question is a public land and the same has been encroached by several persons, but in spite of that it does not appear that any proceeding under the Act has been initiated. The notice under Section 3 of the Act dated 12.11.2016, as contained in Annexure-4, issued to respondent no. 13, does not reflect any encroachment case number, which suggests that in spite of the fact that there was ample material before the Circle Officer to suggest that there has been encroachment upon a public land, he abdicated from discharging a quasi judicial function by not initiating a proceeding.

In the circumstances, it is expected from the Circle Officer, Uchkagaon, respondent no. 4 to examine the revenue records, if need be make spot verification or get the land



measured, whereupon if it appears that the public road has been encroached upon then he will initiate a proceeding under the Act forthwith, if it has already not been initiated, and will take such proceeding to its logical conclusion within a period of three months from the date of receipt/production of a copy of this order, after giving due notice to all affected persons including private respondent nos. 5 to 22.

Accordingly, this Writ application is disposed of.

(Dinesh Kumar Singh, J)

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